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June 16, 2021

VIA ECF

Honorable Lewis A. Kaplan
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, NY 10007

Honorable Robert W. Lehrburger
United States Magistrate Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, NY 10007

Re: *In re Customs and Tax Administration of the Kingdom of Denmark*
(Skatteforvaltningen) Tax Refund Scheme Litigation, No. 18-md-02865-LAK

Dear Judge Kaplan and Magistrate Judge Lehrburger:

In a letter motion dated June 14, 2021, plaintiff Skatteforvaltningen (“SKAT”) sought to seal its letter motion to compel, including the accompanying Exhibits C through H. (No. 18-md-2865, ECF No. 619). By order dated June 15, 2021 (No. 18-md-2865, ECF No. 623), Judge Kaplan granted SKAT’s motion to seal.

Although the motion to seal has been granted, in an excess of caution, and pursuant to Judge Kaplan’s Individual Rules of Practice, the Defendants¹ submit this letter explaining the basis for maintaining under seal the exhibits to SKAT’s motion to compel.

Each of the exhibits at issue was designated “Confidential” pursuant to the Revised Amended Stipulated Protective Order Governing Confidentiality of Discovery Materials in this action. (No. 18-md-2865, ECF No. 489). In addition, Exhibits C² through G are also covered

¹ We submit this letter on behalf of defendants listed in Exhibit A of SKAT’s Letter Motion to Compel Defendants to Produce Documents. Mot., Ex. A, ECF No. 620-1.

² Exhibit C was erroneously produced without the “Confidential Pursuant to Rule 502(d) Order” designation and is being reproduced to SKAT with the correct markings.

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by the order entered into pursuant to Federal Rule of Evidence 502(d) between SKAT and the defendants, as well as non-parties Matthew Stein and Jerome Lhote (the “non-parties”), and granted by Judge Kaplan on January 26, 2021. (No. 18-md-2865, ECF No. 520) (the “502(d) Order”). Although defendants John van Merkensteijn and Richard Markowitz have waived the attorney-client privilege in this matter, the non-parties who share the privilege have not so waived; therefore, the confidentiality of those communications must be preserved. The 502(d) Order further provides that “[n]othing in this Stipulation and Order shall be construed to limit the use of any Privileged Document or Privileged Advice for purposes of this litigation, or for purposes of any litigation SKAT may commence in state or federal court against any other alleged participants in the Tax Refund Scheme, *consistent with the terms of the Protective Order entered in this case*, or its substantial equivalent.” (emphasis added).

Exhibits C through H accompanying SKAT’s motion to compel were properly designated as Confidential pursuant to the terms of the Protective Order and/or subject to the Rule 502(d) Order. Each reflects customarily non-public financial or commercial information, including legal advice rendered to parties who have not waived the privilege, or were provided to Defendants subject to an agreement to maintain the information as confidential. The exhibits therefore properly have been ordered sealed by the Court.

Respectfully submitted,

/s/ Sharon L. McCarthy
Sharon L. McCarthy
Kostelanetz & Fink LLP

/s/ Alan E. Schoenfeld
Alan E. Schoenfeld
Wilmer Cutler Pickering Hale and Dorr LLP

Cc: All counsel of record (via ECF)